HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.621 of 2007

JUDGMENT :

The insurer of both vehicles i.e., the New India Assurance Company Limited represented by respective Branch Managers, preferred the appeal showing the injured, the owner of the lorry bearing No.KA 03 7696 and owner of the jeep bearing No.AP 3 B 7299 as respondents 1 to 3 respectively, impugning the award of the I Additional District Judge-cum-I Additional Motor Accidents Claims Tribunal, East Godavari at Rajahmundry (for short, 'the Tribunal), dated 30.10.2006, in O.P.No.1064 of 2000 under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the claim of injured for Rs.1,00,000/- since awarded by the Tribunal with joint liability for Rs.40,400/- against the owner and insurer of the lorry by exonerating the owner and insurer of the jeep.

2. The contention of the insurer of both vehicles in the grounds of the appeal are that the Tribunal erred in fixing liability on the 2nd respondent to the claim petition and the insurer of the lorry for nothing to show there is a policy, much less in subsistence as on the date of accident as even Ex.B.4-xerox copy of Insurance Policy shows it was obtained on 14.10.1997, whereas the accident was dated 13.10.1997 and by the time the policy issued the accident already taken place and not covered by the policy risk, hence to exonerate the insurer.

3. Whereas it is the contention of the learned counsel for the claimant that the award of the Tribunal holds good and for this Court while sitting in the appeal the detailed and reasoned order of the Tribunal scanning the evidence, there is nothing to interfere, hence to dismiss.

4. Perused the material on record.

5. For sake of convenience the parties are being referred as arrayed before the Tribunal.

6. Now the points that arise for consideration in the appeal are

1. Whether the finding of the Tribunal in fixing the liability on the 2nd respondent-insurer of the claim petition

(1st appellant) of the lorry of R.N. Muthu bearing No.KA 03 7696 is unsustainable and requires interference by this Court while sitting in the appeal, if so, with what observations and conclusions on the liability?

2. To what result?

POINT No.1:

7. So far as the manner of accident concerned, it shows there is involvement of the lorry and the jeep and no doubt under Ex.B.9-certified copy of decree and order in O.P.No.485 of 1998, there was contributory negligence for both the vehicles ie., lorry and jeep fixed that was placed reliance by the respondents, who were the insurer for both vehicles and the same fact though branches are different and likewise under Ex.A.9-certified copy of Decree and award in O.P.No.657 of 2001, it was held there is a policy issued by the insurer that was subsisting even by the date of accident and the claim was allowed with joint liability and the insurer did not prefer any appeal that was made final. Ex.A.2-certified copy of Motor Vehicles Inspector's Report shows that jeep front portion badly damaged and lorry rare portion left side damaged though the accident was not for mechanical defects of both vehicles and regarding the policy and other particulars, documents not produced. The Tribunal in fact referred the same and stated that even the employee of the insurer i.e., RW.1 could not deny the mode of the accident and also admitted that in the connected batch O.Ps. were disposed of and awards were passed in O.P.Nos.657, 658 and 693 of 2001 fixing the joint liability against the insurer, holding that there is policy covering the risk and no appeals filed and the matters reached finality and Ex.A.9-certified copy of decree in O.P.No.657 of 2001 confronted to him in this regard and the Ex.A.1-First Information Report also registered against the driver of the lorry bearing No.KA 03 7696 in showing his rash and negligent driving that caused the accident. Thereby by relying on the awards passed in O.P.Nos.657, 658 and 693 of 2001 against the lorry owner and insurer fixing liability on them, held could not give acceptance to the award covers by Ex.B.9-certified copy of decree and order in O.P.No.485 of 1998 in apportioning the liability equally

against two vehicles apart from there is an appeal pending against O.P.No.485 of 2001 and in that order RW.1 deposed not aware of this. Thus, so far as that finding of the Tribunal concerned, it is not based on Ex.B.4-policy but from what is discussed supra in fixing joint liability and thereby the award of the Tribunal granting compensation of Rs.40,400/- for the injuries sustained by the claimant of two lacerated injuries on the mandible right side and right fore arm proved from Exs.A.3 and A.5 and bunch of medical bills filed for Rs.22,608/- under Ex.A.6 and also hospital fees for Rs.2,730/- under Ex.A.8 even for arguments sake, there is contributory negligence of both vehicles equally since represented by same insurer from their relying upon Ex.B.9-certified copy of the decree and order in O.P.No.485 of 1998 in so fixing what the compensation awarded of Rs.40,400/- is utterly low and not even representing 50% of the compensation the claim otherwise entitled on that ground also including the compensation, there is nothing to interfere. Accordingly, point No.1 is answered.

POINT No.2 :

8. In the result, the appeal is dismissed. No order as to costs.

9. Miscellaneous applications pending, if any, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

12th November 2014

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